

# CERCLA, Corrections and Critters: Three Areas to Address in Development of Renewable Energy Projects

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James A. Thornhill  
McGuireWoods LLP  
[jthornhill@mcguirewoods.com](mailto:jthornhill@mcguirewoods.com)  
804.775.7739

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## What are Phase I Environmental Site Assessments?

Review of a property by an environmental consultant for “recognized environmental conditions” or “RECs” which are “the presence or likely presence of any hazardous substances or petroleum products in, on, or at a property: (1) due to any release to the environment; (2) under conditions indicative of a release to the environment; or (3) under conditions that pose a material threat of a future release to the environment.”

- A Phase I includes four basic components:
  - (1) historical review of the property usage back to 1940 or the first developed use,
  - (2) agency record review for indications of use or release of possible contaminants,
  - (3) site visit to assess the site for evidence of releases of contaminants, and
  - (4) interviews with individuals with knowledge of the current and past use of the property, including past and present owners and occupants
    - Include a key site manager with “good knowledge of the uses and physical characteristics of the property”

## **So why is a Phase I necessary for a renewable energy project?**

- Phase Is are completed in most commercial real estate transactions to identify concerns for releases of hazardous substances and petroleum products
- It is on every lender’s checklist as a deliverable
- Provides certain liability protections under the Comprehensive Environmental Response, Compensation and Liability Act or “CERCLA”

## Phase I's: The Beginning

**CERCLA (1980): Owners and operators liable for releases of hazardous substances**



## Superfund Amendment and Reauthorization Act (1986) amending CERCLA

Added the innocent purchaser defense by a purchaser who acquires the facility:

- After the release of hazardous substances; and
- The purchaser “**did not know and had no reason to know**” of the presence of hazardous substances

Show this by having completed prior to acquisition “**all appropriate inquiries**” into the past uses of the property

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